

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

KEVIN MILES,	:	Case No. 1:15-cv-572
	:	
Petitioner,	:	Judge Timothy S. Black
	:	Magistrate Judge Michael R. Merz
vs.	:	
	:	
WARDEN, MARION	:	
CORRECTIONAL INSTITUTION,	:	
	:	
Respondent.	:	

**DECISION AND ENTRY
ADOPTING THE REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE (Doc. 22)**

This case is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Michael R. Merz. Pursuant to such reference, the Magistrate Judge reviewed the pleadings filed with this Court and, on November 28, 2016, submitted a Report and Recommendation. (Doc. 22). Following Petitioner's objections (Doc. 25), this Court ordered the matter recommitted to the Magistrate Judge for a supplemental Report and Recommendations. (Doc. 26). The Magistrate Judge submitted the supplemental Report and Recommendations on January 20, 2017. (Doc. 27). Petitioner filed objections to the supplemental Report and Recommendations on February 13, 2017.

(Doc. 28).¹

As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Report and Recommendations should be and is hereby adopted in its entirety. Accordingly, **IT IS ORDERED** that:

- 1) Petitioner's petition for a writ of habeas corpus (Doc. 1) is **DENIED WITHOUT PREJUDICE**;
- 2) A certificate of appealability shall not issue with respect to any of the grounds for relief alleged in the petition because petitioner has not stated a "viable claim of the denial of a constitutional right," nor are the issues presented "adequate to deserve encouragement to proceed further." See *Slack v. McDaniel*, 529 U.S. 473, 475 (2000) (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)); see also 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b);
- 3) The Court certifies that pursuant to 28 U.S.C. § 1915(a)(3), an appeal of this Order would not be taken in good faith and therefore Petitioner is denied leave to appeal *in forma pauperis*.

¹ After reviewing the supplemental Report and Recommendations, Petitioner's objections, and the case record, the Court finds that Petitioner's objections are not well taken. Petitioner's objections to the original Report and Recommendations argued that the state failed to prove it had jurisdiction to try him and that his conviction is therefore invalid. (Doc. 25). Defendant's supporting arguments for this assertion included the fact that no grand jury transcript had been produced and that the court of appeals' judgment was invalid because it lacked a full trial transcript. (*Id.* at 23–25). The supplemental Report and Recommendations outlined that (1) these jurisdictional arguments were not exempt from the federal statute of limitations on habeas corpus actions that barred the petition in this case and (2) Petitioner's arguments were meritless as “[i]t has never been the federal law in the United States that a person committed to prison on process from a state court could force the State to prove from scratch that the detention was lawful.” (Doc. 27, at 2–4). Petitioner's objections to the supplemental Report and Recommendations largely reframe his earlier objections and do not adequately refute the Magistrate Judge's conclusions.

IT IS SO ORDERED.

Date: 2/27/17

Timothy S. Black
Timothy S. Black
United States District Judge